

ORDINANCE G-2016-14 AMENDED

**INTRODUCING: Mosby, Weaver,
and Adams
COMMITTEE: Public Works**

**AN ORDINANCE ESTABLISHING SECTION 3.95.040
(RESPONSIBLE BIDDING PRACTICES AND SUBMISSION REQUIREMENTS)
OF THE CODE OF ORDINANCES**

WHEREAS, the City of Evansville, Indiana ("City"), is required by law pursuant to I.C. 36-1-12-4 to award certain contracts for public works projects to the "lowest responsive and responsible" bidder;

WHEREAS, I.C. 36-1-12-4(b)(10) further requires that the City entity awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsive", with such factors including: 1) whether the bidder has submitted a quote that conforms in all material respects to the specifications; 2) whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders; and 3) whether the bidder has complied with all applicable statutes, ordinances, resolutions or rules pertaining to the award of a public contract;

WHEREAS, I.C. 36-1-12-4(b)(11) further requires that the City entity awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsible", with such factors including: 1) the ability and capacity of the bidder to perform the work; 2) the integrity, character, and reputation of the bidder; and 3) the competence and experience of the bidder;

WHEREAS, the City seeks to enhance its ability to identify "responsive and responsible" bidders on all City public works construction projects by institution of more comprehensive submission requirements which are in compliance with I.C. 36-1-12 et. seq.;

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Ordinance will preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects; and

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Ordinance will assure efficient use of taxpayer dollars, will promote public safety and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Evansville as follows:

Section 1. Amendment of Title 3 of the Code. Title 3 of the Evansville Municipal Code is hereby amended by establishing a new subsection within Chapter 3.95 of the Code, which shall read as follows:

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3.95.040 Responsible Bidding Practices and Submission Requirements

(1) Bid submission requirements

Contractors proposing to submit bids on any City public works project estimated to be at least One Hundred and Fifty Thousand dollars (\$150,000.00) or more must, prior to the bid submission deadline, submit a statement made under oath and subject to perjury laws, on a form designated by the City and must include:

(A) A copy of a print-out of the Indiana Secretary of State's online records for the bidder dated within sixty (60) days of the submission of said document showing that the bidder is in existence, current with the Indiana Secretary of State's Business Entity Reports, and eligible for a certificate of good standing. If the bidder is an individual, sole proprietor, or partnership, this subsection 3.95.040(1) shall not apply;

(B) A list identifying all former business names.

(C) Any determinations by a court or governmental agency for violations of federal, state, or local laws including, but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act ("OSHA"), or federal Davis-Bacon and related Acts;

(D) A statement on staffing capabilities, including labor sources from which labor will be derived on the public works project;

(E) Evidence that the contractor is in compliance with I.C. 5-16-13-12 and its requirements pertaining to participation in apprenticeship and training programs applicable to the work to be performed on the public work project;

(F) A copy of a written plan for employee drug testing that: (1) covers all employees of the bidder who will perform work on the public work project; and (2) meets, or exceeds, the requirements set forth in section 3.95.020 of this Chapter and I.C. 36-1-12-24;

(G) The name and description of the management experience of each of the bidder's project managers and superintendents that bidder intends to assign to work on the project;

(H) Proof of any professional or trade license required by law and section 3.95.030 of this Chapter for any trade or specialty area in which bidder is seeking a contract award, disclosure of any suspension or revocation within the previous five years of any professional or trade license held by the company, or of any director, office or manager employed by the bidder;

(I) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's listing of approved sureties; and

(J) The contractor shall provide a written statement of any federal, state, or local tax liens or tax delinquencies owed to any federal, state, or local taxing body in the last five years.

The City reserves the right to require supplemental information from the bidder for verification of any of the information provided by the bidder and may also conduct random inquiries of the bidder's current and prior customers. Notwithstanding the foregoing, this section shall not apply to a public work project performed by the City in accordance with I.C. 36-1-12-3(b).

(2) Submissions from subcontractors

(A) All bidders shall provide a written list that discloses the name, address, and type of work for each first-tier subcontractor from whom the bidder has accepted a bid and/or intends to hire

on any part of the public work project, including individuals performing work as independent contractors. In accordance with section 3.90.110, all bidders shall adhere to City policy and procedures pertaining to minority owned business and women owned business utilization.

(B) In addition, each such first-tier subcontractor shall be required to adhere to the requirements of section 3.95.040(1) of this chapter as though it were bidding directly to the City, except that first-tier subcontractors shall submit the required information (including the name, address, and type of work for each of their first-tier subcontractors) to the bidder and the bidder shall then forward said information to the City. Payment shall be withheld from any first-tier subcontractor who fails to timely submit said information until such information is submitted and approved by the City.

(C) Upon request, the City may require any bidder to provide the required information (including name, address, type of work on the project and the name of the higher-tier subcontractor) about its second and lower-tier subcontractors. Payments shall be withheld from any bidder who fails to timely submit this information until this information is submitted and approved by the City. Additionally, the City may require the successful bidder to remove the relevant subcontractor or second or lower-tier subcontractor from the project and replace it with a responsive and responsible subcontractor.

(D) The City may withhold all payments otherwise due to a bidder for work performed by a subcontractor until such subcontractor submits the information required pursuant to this chapter and the City approves such information. Successful bidders shall only be permitted to use approved subcontractors which have provided required information to the City about the applicable responsive and responsible subcontractor.

(E) The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a subcontractor shall not create any rights in the Disclosed Subcontractor. A bidder and/or subcontractor may not substitute another subcontractor ("Substitute Subcontractor") for a Disclosed Subcontractor without written approval of City. The contractor shall provide written notice of the name, address, and type of work of the Substitute Subcontractor. The Substitute Subcontractor shall be subject to all of the obligations of a subcontractor under this chapter.

(3) Validity of pre-qualification classification

(A) Upon designation by the City that a contractor's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the City, the contractor or subcontractor may be pre-qualified for future City public works projects. A contractor's classification as "pre-qualified" shall exempt the contractor or sub-contractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, contractors or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing on a form provided by the City (also referred to as the "short form") by December 31st for the upcoming calendar year. Failure by any pre-qualified contractor or subcontractor to timely submit its complete application for continuation of "pre-qualified" standing shall result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" contractor or subcontractor shall still be permitted to bid on City public works projects.

(B) Any material changes to the contractor's status, at any time, must be reported in writing within ten (10) days of its occurrence to the City. The pre-qualification designation is solely within the discretion of the City and the City specifically reserves the right to change or revoke

the designation for a stated written reason(s).

(C) Denial of pre-qualification shall be in writing and shall be forwarded to the contractor within seven (7) working days of such decision. Any contractor denied or losing pre-qualification status may request reconsideration of the decision by submitting such request in writing to the City within five (5) business days of receipt of notice of denial.

(4) Incomplete submissions by bidders

It is the sole responsibility of the potential bidder to comply with all submission requirements applicable to the bidder in this section 3.95.040 by no later than the public bid opening. Submissions from subcontractors must be in accordance with section 3.95.040(2) above. Submissions deemed inadequate, incomplete, or untimely by the City may result in the automatic disqualification of the bid.

(5) Responsive and responsible bidder determination

The City, after review of complete and timely submissions, shall, in its sole discretion, after taking into account all information in the submission requirements, determine whether a bidder is responsive and responsible pursuant to I.C. 36-1-12-4. The City specifically reserves the right to utilize all information provided in the contractor or subcontractor's submission or any information obtained by the City through its own independent verification of the information provided by the contractor.

(6) Certified payroll

For public work projects in which the cost is at least Two Hundred and Fifty Thousand Dollars (\$250,000), the successful bidder and all subcontractors working on a public work project shall, upon request by the City, identify the job title, work classification, rate of pay, tax deductions, and craft of each employee on the project, e.g. journeyman electrician or apprentice electrician. The successful bidder and all subcontractors may satisfy the requirements of this section, if requested by the City, by providing the federal form now known as a WH 347.

(7) Public records

All information submitted by a bidder or a subcontractor pursuant to this chapter are public records subject to review pursuant to the Indiana Access to Public Records law (IC 5-14-3).

(8) Penalties for false, deceptive, or fraudulent statements / information

Any bidder that willfully makes, or willfully causes to be made, a false, deceptive or fraudulent statement, or willfully submits false, deceptive or fraudulent information in connection with any submission made to the City shall be disqualified from bidding on all City projects for a period of three (3) years and may be enforced pursuant to EMC 1.05.170 and 1.05.180, or as otherwise provided by statute.

(9) Conflict and Applicable Law

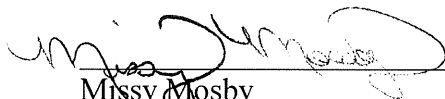
This section 3.95.040 shall be interpreted and construed in harmony with I.C. 36-1-12, I.C. 5-16-13 and all applicable provisions of the Indiana Code as they pertain to public work projects, and nothing herein shall be interpreted to be in conflict therewith. Should there be a conflict, the applicable provisions of the Indiana Code shall govern.

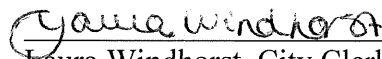
Section 2. Severability. If any provision of this Ordinance is found to be invalid, the remaining provisions of this Ordinance shall not be affected by such a determination. These other provisions of this Ordinance shall remain in full force and effect without the invalid provision.

Section 3. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

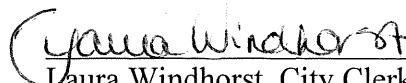
PASSED BY the Common Council of the City of Evansville, Indiana, on the 28 day of March, 2016, and on said day signed by the President of the Common Council and attested by the City Clerk.

ATTEST:

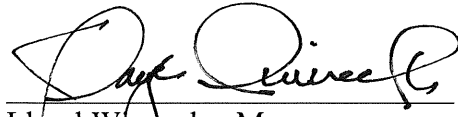

Missy Mosby
President of the Common Council


Laura Windhorst, City Clerk
City of Evansville, Indiana

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, and to the Mayor of said City, the 29 day of March, 2016, at 2:30 o'clock p.m. for his consideration and action thereon.


Laura Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said ordinance and return the same to the City Clerk this 30th day of March, 2016, at 4:00 o'clock p.m.



Lloyd Winnecke, Mayor
City of Evansville, Indiana